

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3373

IN THE MATTER OF:

Served July 11, 1989

Application of SCENIC SIGHTSEEING )  
TOURS, to Amend Certificate No. 92 )

Case No. AP-89-06

By application filed January 26, 1989, Scenic Sightseeing Tours (Scenic Tours or applicant), a partnership, seeks to amend its Certificate No. 92. Applicant seeks to (1) transport passengers, together with mail, express, and baggage in the same vehicle as passengers, in special operations between points in Montgomery County, MD, on the one hand, and, on the other, points in the Metropolitan District, restricted to lectured sightseeing tours; (2) transport passengers, together with mail, express, and baggage in the same vehicle as passengers, in special operations between hotels and motels located in the District of Columbia, on the one hand, and, on the other, points in the Metropolitan District, restricted to service on a pre-arranged basis, and (3) transport passengers in vehicles with a manufacturer's designed seating capacity in excess of 15 passengers.

A public hearing was held on May 4, 1989, pursuant to Order Nos. 3294, 3312, and 3319, served February 23, April 6, and April 21, 1989, respectively. Two company witnesses and three public support witnesses testified on behalf of the applicant. No protests were filed.

SUMMARY OF THE EVIDENCE

Scenic Tours currently holds WMATC Certificate No. 92 authorizing the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers, restricted to lectured, round-trip sightseeing tours, from points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N.W., and Rock Creek Parkway, N.W., thence along Constitution Avenue, N.W., to 17th Street, N.W., thence along 17th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to 10th Street, N.W., thence along 10th Street, N.W., to F Street, N.W., thence along F Street, N.W., to 9th Street, N.W., thence along 9th Street, N.W., to

Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to Constitution Avenue, N.W., thence along Constitution Avenue to its junction with 2nd Street, N.E., to Mount Vernon and Arlington National Cemetery, Va., and points in the District of Columbia, and return.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver).

Mr. Major L. Gorham testified in his capacity as one of the two partners of Scenic Tours. Mr. Gorham has been in the sightseeing business for 30 years. He has driven a limousine, a taxicab, and a 14-passenger van. He is also a licensed tour guide. Mr. Jarlvis Gorham is also a partner of Scenic Tours and is the son of Mr. Major Gorham. He has ten years of experience in the sightseeing business as a driver and licensed tour guide. He is also capable of conducting tours in Spanish.

The testimony of the partners overlaps in subject matter and substance and shall be generally treated together. Applicant conducts business year round, five to six days a week. Operations are now conducted in one 14-passenger van. Additional vehicles are leased on a regular basis. Scenic Tours' current business on the Ellipse is based upon solicitations, repeat business, and referrals. Scenic Tours wants the seating-capacity removed because it cannot accommodate the number of people who want service. Applicant frequently turns away business because of insufficient vehicle size. Scenic Tours expects to be able to fill a 29-passenger vehicle two to three times a week. Applicant plans to begin the proposed operations in one 29-passenger vehicle. If business warrants, Scenic Tours would also purchase a full-size motor coach. Applicant engages in a regular program of preventive maintenance. Mr. Major Gorham performs a substantial amount of the required maintenance and would use an outside mechanic if needed for major repairs. If the authority sought in this application is granted, Scenic Tours would use its 14-passenger van to back-up its larger vehicle. Driving for the partnership is performed by the partners. If a larger vehicle is purchased, the same arrangement would continue. A part-time driver would be hired if demand dictates. Applicant requires that any newly-hired driver be a licensed tour guide, be familiar with the Metropolitan District, have a neat appearance, and have the type of personality to deal effectively with the riding public.

Applicant proposes to offer three tours. The first tour, an "Observation Tour" with a proposed per capita fare of \$25 for adults and \$12.50 for children, would include a riding lectured tour of notable city sites with the following stops: Lincoln Memorial, Jefferson Memorial, Vietnam Memorial, and the Kennedy grave sites at

Arlington National Cemetery. The second tour is the "Half-Day Building Tour" with a proposed per capita fare of \$15 for adults and \$7.50 for children and includes a tour of the Capitol, Smithsonian Institution, White House (when open), Lincoln Memorial, and Vietnam Memorial. The third tour is the "All Day Tour" with a proposed per capita fare of \$45 for adults and \$22.50 for children. This offering combines the "Building Tour" with the "Observation Tour" and adds a visit to Mount Vernon. The children's rates are applicable between the ages of six and nine; children under the age of five would not be charged when accompanied by an adult.

Service originating at hotels and motels in Washington, DC, would be conducted on a pre-arranged basis only. A representative from a hotel would contact applicant to advise that patrons desire sightseeing service. Applicant plans to install a telephone in its larger vehicle. Calls from hotels must be made at least two hours in advance of service. The proposed operations in Montgomery County would not be restricted to a pre-arrangement. Applicant plans to integrate the proposed operations by first picking up patrons in Montgomery County, MD, then adding patrons assembled at the Ellipse and at Washington, DC, hotels and motels. To fill the larger vehicle, applicant plans to advertise the proposed service by brochures and in the Yellow Pages.

Applicant's balance sheet as of December 31, 1988, shows cash assets of \$1,127 and fixed assets, minus depreciation, of \$7,475. Liabilities total \$1,432, with \$7,170 in capital accounts. Scenic Tours' statement of income and expenses for the year ended December 31, 1988, lists gross revenue of \$47,426 and expenses of \$28,124. Applicant submitted a projection of income and expenses based on revenues from a 29-passenger vehicle for 1989 which reflects \$59,075 in income and \$29,434 in expenses. After the hearing, applicant filed projected income data for operations performed in a 46-passenger vehicle. This projection shows that Scenic Tours expects to generate \$180,000 in revenue and \$133,460 in expenses. The partners testified that they expect the purchase of the 29-passenger vehicle to be supported by cash-flow from the business. However, both partners would be willing to invest money to purchase a larger vehicle. Mr. Jarlvis Gorham is in a financial position to loan the partnership \$50,000 while Mr. Major Gorham can make a \$15,000 loan. Applicant is in compliance with the Compact and Commission rules and regulations and the United States Department of Transportation (USDOT) Safety Regulations and plans continued compliance.

Ms. Judith Webb testified in support of the application. Ms. Webb is an active member of numerous organizations including the American Theater Association, the International Thespian Society, Alpha Kappa Alpha Sorority, and The Association for Curriculum Supervision and Curricular Development. The witness testified that members of these organizations convene in Washington, DC, 12 to 14 times a year. Ms. Webb is often called upon to assist in arranging transportation and sightseeing tours for organization members. Individuals stay at hotels/motels located in Washington, DC, and in Montgomery County, MD.

It is her experience that Montgomery County is becoming a popular place to stay. While thousands of organization members may attend a meeting held in Washington, DC, individual group sizes generally range between 30 to 40. It has been the witness' experience that 85 percent of persons visiting the city are interested in sightseeing tours. This group size would be suitable to tours provided in a minibus. Most organization members would prefer hotel pickups; however, there may be occasions that require tour origination on the Ellipse. The witness has made referrals to applicant. Persons taking the tour have reported that applicant is knowledgeable about the city, and they have been pleased with the tours. The witness would promote applicant's service by recommendations and brochures.

Mr. Leroy Bowen also testified in support of the proposed operation. Mr. Bowen is general manager of the Walter Reed Hospitality House Hotel located in Northwest Washington, DC. The hotel has 72 rooms and plans to expand by 50 rooms. The hotel's clientele is primarily military personnel and their families, local families, and international visitors. The hotel has embarked upon an international marketing campaign to attract more international visitors. Mr. Bowen has received as many as 15 to 20 inquiries for sightseeing service daily; however, no carriers currently provide door-to-door service to the hotel. Due to the location of the hotel, existing sightseeing carriers will only serve the hotel if it can guarantee a large number of passengers. The Hospitality House sells Tour Mobile tickets, but hotel patrons must make their way downtown to board that service. Hotel guests find it difficult to use public transportation to sightsee; language barriers are often a problem. Hotel patrons are also hesitant to use private cars to sightsee because of the lack of parking in the downtown area. The witness believes that guests would be happier if a door-to-door sightseeing service were available and that such a service would be an advantage to his hotel and its guests. The witness would display brochures, sell tickets, and inform guests about applicant's service. The witness has no problem working with a service that is conducted on a pre-arranged basis.

The final witness to testify in support of the application was Mr. Roger Clapp. Mr. Clapp is general manager of the Day's Inn in Rockville, MD. No door-to-door sightseeing carrier serves the hotel. Hotel guests are primarily business men and women who often bring their families. Spouses and families require activities to fill the days. Approximately 3 to 5 families of 4 to 5 persons inquire about sightseeing service daily. Guests must use the Metro to get downtown to tourist attractions. However, the Metro station is a mile away, too far for most families to walk. The hotel does not provide a shuttle bus. The witness believes that a door-to-door sightseeing service would be beneficial to the hotel. The witness recounted a recent incident where a guest checked out because of the hotel's inaccessibility to area attractions. Mr. Clapp would display applicant's brochures and sell tickets. He believes that, with his promotion efforts, sightseeing interest would increase. The witness further believes that community residents may also use the proposed service.

## DISCUSSION AND CONCLUSIONS

In determining whether to grant or expand a certificate of public convenience and necessity, we look to Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove it is fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements. Section 4(b) further requires that the applicant prove the proposed service is required by the public convenience and necessity.

We find applicant capable of providing the proposed service. The partners of Scenic Tours together have 40 years in the sightseeing business and have held a WMATC certificate since 1983. Scenic Tours has received requests for service in a larger vehicle and has turned down the business because of current restrictions on vehicle size. Scenic Tours filed this application because of such requests and because it believes that more hotels and motels in Washington, DC, and Montgomery County, MD, need door-to-door sightseeing service. Applicant would continue to originate trips on the Ellipse. Both partners are willing to make loans to the partnership if needed. With additional financial support available, applicant's financial data indicate adequate financing to sustain the proposed operations.

We turn now to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Line Operations (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant produced three public support witnesses, all of whom testified to a need for door-to-door sightseeing services. Two of the witnesses represented establishments that now have no door-to-door service and testified that if such a service were offered it would enhance business. The lack of convenient public transportation results in hotel guests having a difficult time reaching local sightseeing attractions. All of the witnesses testified that the persons interested in taking a tour would prefer the convenience of a door-to-door service. The volume of persons projected by the witnesses supports a public need for service in a larger vehicle. Based upon the

testimony of the witnesses and the entire record in the case, we find that Scenic Tours has met its burden of proving that the proposed service will serve a useful purpose for which there is a demonstrated need. The evidence supports the conclusion that the public purpose found to exist has not been and will not be served as well by existing authorized carriers.

No protests were entered, and we conclude that applicant's proposed service will not materially affect the operations of existing carriers. Finally, applicant has failed to present evidence of any need to transport mail, express, and baggage in the same vehicle as passengers, and we do not perceive such a need as a natural consequence of this type of service. Accordingly, this aspect of the application will be denied.

THEREFORE, IT IS ORDERED:

1. That Scenic Sightseeing Tours is hereby conditionally granted authority, contingent upon timely compliance with the terms of this order, to (1) transport passengers, in special operations, between points in Montgomery County, MD, on the one hand, and, on the other, points in the Metropolitan District, restricted to lectured sightseeing tours; (2) transport passengers, in special operations, between hotels and motels located in the District of Columbia, on the one hand, and, on the other, points in the Metropolitan District, restricted to lectured sightseeing tours performed on a pre-arranged basis, and (3) transport passengers in vehicles with a manufacturer's designed seating capacity in excess of 15 passengers.

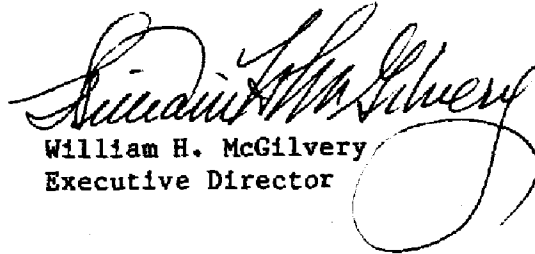
2. That, except to the extent granted herein, this application is hereby denied.

3. That Scenic Sightseeing Tours is hereby directed within 30 days of the service date of this order to file with the Commission (a) two copies of its WMATC Tariff No. 2; (b) an equipment list specifying make, year, model, serial number, seating capacity, and license plate number and jurisdiction for each vehicle to be used in WMATC operations; (c) evidence of ownership or a lease in conformance with Regulation No. 69 for each vehicle to be used in WMATC operations; (d) a certificate of insurance in accordance with Regulation No. 62; and (e) an affidavit of identification of vehicles pursuant to Regulation No. 67.

4. That unless Scenic Sightseeing Tours complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

5. That upon timely compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Scenic Sightseeing Tours in the form and as worded in the Appendix to this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:



William H. McGilvery  
Executive Director

NO. 92

MAJOR LESTER GORHAM AND JARLVIS EARL GORHAM, A PARTNERSHIP

Trading as SCENIC SIGHTSEEING TOURS

By Order Nos. 2447, 2483, 2504, and 3373 of the Washington Metropolitan Area Transit Commission issued August 9, October 7, and December 2, 1983, and July 11, 1989;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order Nos. 2447, 2483, 2504, and 3373;

THEREFORE, IT IS ORDERED that the said carrier be, and is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

- PART A -

SPECIAL OPERATIONS transporting passengers, from points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N.W., and Rock Creek Parkway, N.W., thence along Constitution Avenue, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to 10th Street, N.W., thence along 10th Street, N.W., to F Street, N.W., thence along F Street, N.W., to 9th Street, N.W., thence along 9th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to Constitution Avenue, N.W., thence along Constitution Avenue, to its junction with 2nd Street, N.E., to Mount Vernon and Arlington National Cemetery, VA, and points in the District of Columbia, and return.



- PART B -

SPECIAL OPERATIONS transporting passengers, between points in Montgomery County, MD, on the one hand, and, on the other, points in the Metropolitan District.

- PART C -

SPECIAL OPERATIONS transporting passengers between hotels and motels located in the District of Columbia, on the one hand, and, on the other, points in the Metropolitan District.

RESTRICTED in PARTS A, B, and C above to lectured sightseeing tours.

FURTHER RESTRICTED in PART C above to service performed on a pre-arranged basis.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.